1002.

SUPREME COURT OF THE UNITED STATES.

No. 132.

JOHN G. FORBES & AL., PL'FFS IN ER.,

vs.

JAMES INERARITY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DIST. OF ALABAMA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	2	2
Bill of complaint	4	3
Exhibit A, referred to in bill of complaint	30	16
Exhibits B & C, " "	31	17
Exhibit D, " "	33	18
" E, " "	34	19
" F, " "	37	20
" G, " "	42	23
" H, " "	43	23
" I, " "	44	24
" K, " "	47	25
" L, " "	48	26
" M, " "	51	27
" N, " "	53	28
" N, " "	62	33
Subpœna	65	34
Order of court	66	35
Demurrer of defendants	67	36
Decree	68	37
Appeal bond	69	37
Clerk's certifiate	70	38

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United States of America:

The President of the United States to the judges of the *of the* circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

Because, in the record and proceedings, as also in the rendition of the judgment, in a plea which is in the said circuit court before you, wherein John Gordon Forbes, Maria Sophia Williams, Thomas B. Williams, Isabel Ann Forbes, Juan Forbes, Maria Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, Catalina Forbes, and Rosalie Sofa Forbes, are plaintiffs, and James Innerarity and John Innerarity, are defendants, in error, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears. And it being fit, if error there be, the same should be corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court of the United States to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings thereon to correct the error, what of right, according to law, and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court,
[L. S.] this first Monday of December, in the year of our Lord one thousand eight hundred and forty-four.

Issued the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-five.

Attest: JOHN FITTS,
Clk. C. C. So. Dist. Ala.

United States of America:

Circut court of the United States for the fifth judicial circuit and southern district of Alabama, to James Innerarity.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the court aforesaid, wherein John Gordon Forbes, Mary Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, and Rosalia Sofia Forbes, are plaintiffs in error, and you are defendant, to shew cause, if any you have or can, why the judgment, in said writ of error mentioned, should not be corrected, and speedy justice done to the parties in that behalf.

Witness the honorable William Crawford, one of the judges of the circuit court of the United States for the circuit aforesaid, this 3d day of October, in the year of our Lord one thousand eight hundred and forty-five.

WM. CRAWFORD,
One of the Judges of the U. States circuit court.

Received 15th October, 1845, and executed on Stewart and Easton, attorneys for James Innerarity, same day.

WM. ARMSTEAD, *U. S. M.*
By C. CUYLER, *D. M.*

Pleas had before the honorable the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of November, in the year of our Lord one thousand eight hundred and forty.

Be it remembered, that heretofore, to wit, on the eighth day of August, in the year of our Lord one thousand eight hundred and forty, John Gordon Forbes, Maria Sophia Williams, Thomas B. Williams, Isabel Ann Forbes, Juan Forbes, Maria Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, Catalina Forbes, and Rosalie Sofia Forbes, filed in said court their bill of complaint against James Innerarity and John Innerarity, in the words and figures following, to wit:

In the circuit court of the United States,
For the ninth judicial circuit:

To the honorable John McKinley and William Crawford, judges of said court, sitting in equity.

Humbly complaining, show unto your honors: Your orators, John Gordon Forbes, of London, in the island of Great Britain, son of Thomas Forbes, hereinafter mentioned, late of Nassau, in the island of New Providence, who sues as well as executor of the late Th. Forbes as in his own right, Mary Sophia Williams, late Mary Sophia Forbes, daughter of the said Th. Forbes, Thomas B. Williams, who sues in right of his wife, the said Mary Sophia; both of London aforesaid, Isabel Ana Forbes, Juan Forbes, Maria Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, Catalina Forbes, and Rosalie Sofia Forbes, all of the island of Cuba, and grand-children of said Th. Forbes, the said Maria de Jesus Sarah, Loreta Josepha, Catalina, and Rosalia Sofia, being minors, and suing by their next friend, the said John Gordon Forbes. That, between the years 1782 and 1792, a partnership for commercial purposes existed at Pensacola, in the Spanish province of West Florida, between one William Panton, the said Thomas Forbes, and one John Leslie, under the name and style of Panton, Leslie & Co. During part of this period one Alexander McGillway had an interest in the house, but relinquished it about the year 1792, as your orators are informed. That this company was extensively engaged, by the authority of the King of Spain, in traffic with the Indians, and in other business, and had subor-

dinate houses established at Mobile, Apilachicola, St. Augustine, and elsewhere. That in the year 1792 John Forbes, a younger brother of the said Thomas Forbes, became a partner of the house, and some time between the years 1792 and 1798, Robert Leslie, a brother of the said John Leslie, and one John Forrester, were also admitted partners. In 1798, Robert Leslie died; in 1801, William Panton died; and in 1803, John Forrester died. That, some time after the death of John Forrester, in 1803 or 1804, James Innerarity and one William Simpson became partners in the establishment. In 1804, John Leslie died. Up to this period, and through all the successive changes above mentioned, by the admission of new partners, and the deaths of the old ones, the house transacted its business under the original name and style of Panton, Leslie & Co.; but that, on the death of John Leslie, the firm took the name of John Forbes and Company, and consisted of Thomas Forbes, John Forbes, James Innerarity, and William Simpson, and continued to transact business under that partnership name till its final dissolution. That, in the year 1808, the said Thomas Forbes died, and the surviving partners continued the business till about the year 1812, when John Innerarity, a brother of the said James Innerarity, became a partner of the concern, and the said William Simpson died, and from that time till the year 1823, when John Forbes died. That from that time the firm of John Forbes & Co. has only existed for the purpose of winding up its affairs.

Your orators further shew unto your honors, that, on the termination of each of the above concerns, by the successive deaths of the partners, as above stated, the share of the deceased partner, in the debts, assets, and credits, lapsed and passed over to the survivors, who formed the succeeding concern, the balance of profit or loss being credited or debited, according to the circumstances of the case, to the deceased partner on the books of the succeeding concern. That, on the termination of each concern, as aforesaid, the assets and funds, and the debts due to and by the said concern, were transferred by inventory at a stipulated value, and assumed by the succeeding concern at the said stipulated value, and the preceding concern was credited or debited with the balance appearing on the face of the said inventory on the books of the succeeding concern; and that, on the formation of the firm of John Forbes & Co., the assets, debts, and credits of the previous concerns of Panton, Leslie & Co., passed over to, and were assumed in like manner by, the said firm of John Forbes & Co., and the balance credited to Panton, Leslie & Co., on the books of John Forbes & Co., and, in fact, formed the whole capital of John Forbes & Co.

Your orators further shew, that, up to the period of the formation of the firm of John Forbes & Co., the firm of Panton, Leslie & Co. had acquired a large and valuable estate, consisting of lands, town lots, moneys, slaves, and other personal property, and also of debts due them, all of which passed into the hands of John Forbes & Co.; the said real estate under the restrictions, conditions, and trusts hereinafter mentioned, and the personal estate in the manner above mentioned; the

said firm consisting, as before stated, of Thomas Forbes, John Forbes, James Innerarity, and William Simpson.

Your orators further shew unto your honors, that the said Thomas Forbes died in the year 1808, appointing the said John Forbes and his two sons, William Henry Forbes, since dead, and John Gordon Forbes, one of your orators, his executors, and left all his property, both real and personal, to his children, the said W. H. Forbes, the said J. Gordon Forbes, and Mary Sophia Forbes, now Mary Sophia Williams, also one of your orators. That your orators, J. Gordon Forbes and Mary Sophia Williams, are the only surviving children of the said Thomas Forbes, and that the said Mary Sophia is now under coverture and married to one Thomas Bull Williams, one of your orators. That the said Jno. Forbes took upon himself the executorship of the last will and testament of the said Thomas Forbes, and continued active executor thereof till his death in 1823. That your orator, John Gordon Forbes, is the only surviving executor of said estate, and is duly qualified to act as such, under the laws of the State of Alabama; all this will more fully appear by reference to the will of the said Thomas Forbes, an attested copy of which has been admitted to probate, and a copy of which is hereto annexed, marked "Exhibit A," which your orators pray may be taken as a part of this bill.

Your orators further state, that your orators, Isabel Ana Forbes, Juan Forbes, Maria Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, Catalina Forbes, and Rosalie Sofia Forbes, are children of the said William Henry Forbes, and grand-children of the said Thomas Forbes. That the said W. Henry Forbes died on the fourth day of June, 1839, leaving a will, executed in the island of Cuba, on the seventh day of May, 1839, and attested by eight witnesses, by which will he left all his property, both in possession and in action, to his children, your orators last aforesaid.

Your orators further represent unto your honors, that, at the time of the death of the said Thomas Forbes, the said firm was largely indebted to the said Thomas Forbes, and that there was an admitted balance on the books of John Forbes & Co., as your orators are informed and verily believe, to the credit and in favor of the said Thomas Forbes, amounting to the sum of seventy-seven thousand one hundred and six dollars and five reals, ($77,106.5.) Besides this admitted balance, there were, at the time of the decease of the said Th. Forbes, various outstanding debts due the firm of John Forbes & Co., and that of Panton, Leslie & Co., of which, when recovered, your orators would be entitled, as representatives of Thomas Forbes, to the one-third part, which was the proportion of interest which the said Thomas Forbes had in the said concerns. That the said James Innerarity has acknowledged, that John Forbes & Co. have, since the death of the said Thomas Forbes, recovered, on account of said outstanding debts, sums amounting collectively to the sum of seventy thousand dollars, ($70,000,) as appears by two certificates signed by James Innerarity, one dated the 1st September, 1823, the other the twenty-seventh October, in the same

year, copies of which are hereto annexed, marked "Exhibits B and C," and which your orators pray may be made a part of this bill; and your orators are informed and verily believe, that debts to a much larger amount have since been recovered, and that a much larger balance than the admitted one of $77,106.5, was really due the said Thomas Forbes at the time of his death.

Your orators further state, that neither the above mentioned balance of $77,106.5, nor any sum recovered on account of the outstanding debts above mentioned, nor any other moneys, have ever been accounted for by the said firm of Jno. Forbes & Co., or by any of the surviving partners thereof, either to John Forbes, or the said William Henry Forbes, as executors of the said Thomas Forbes, or to the present representatives of the said Thomas Forbes, your orators, though frequent request has, at various times, been made for such account of the said John Forbes & Co., by the said representatives, your orators. That though, as your orators are informed, the said John Forbes & Co., in the lifetime of the said Thomas Forbes, accounted to the said Jno. Forbes, who was executor of the estates of William Panton and John Leslie, for their respective shares of the assets of Panton, Leslie & Co., yet, your orators aver, that the said John Forbes and Co. never accounted to the said Thomas Forbes, or the said James Forbes, or to any one else, for said Th. Forbes' share in the said assets; but that, after the death of Thos. Forbes, the said John Forbes & Co. continued to transact business for many years, holding the said balance and other moneys and properties due the said Tho. Forbes, and using the same for their own benefit.

Your orators further show unto your honors, that the said John Forbes, James Innerarity, William Simpson, and John Innerarity, never put in any capital into any of the concerns, either of Panton, Leslie & Co., or Jno. Forbes & Co., but, on the contrary, were indebted, individually, to the firm of Panton, Leslie & Co., on its dissolution; and that the whole capital of Jno. Forbes & Co. consisted, first, of the whole assets and funds of Panton, Leslie & Co., and afterwards of the said Thomas Forbes' share of said assetts and funds, which the said Jno. Forbes & Co., and the surviving partners thereof, have fraudulently withheld and retained in their hands to this day. Your orators further state, that some time after the striking of the above mentioned balance of $77,106.5, and after the decease of the said Thomas Forbes, the said John Forbes & Co., made out what they called a set of "revisionary accounts," pretending to discover great errors in their former accounts; by which revisionary accounts they reduced said balance, formerly admitted to be due the estate of Thomas Forbes, to thirty-two thousand seven hundred and nine dollars two and one-half reals. That, on the formation of the firm of Jno. Forbes & Co., the debts due the previous firm of Panton, Leslie & Co., were assumed unconditionally by the said Jno. Forbes & Co., and transferred to them by inventory, at a stipulated value; that, in estimating the value of the said debts, the risk of not recovering them, and the probability of ulti-

mate loss on them, were taken into consideration, and the firm of Panton, Leslie & Co. were credited for them at the value thus estimated. That some of said debts proving utterly worthless, (as asserted by the said Jno. Forbes & Co.,) these revisionary accounts were made up by writing back to the debit of Panton, Leslie & Co., with interest thereon, all these bad debts, though previously assumed unconditionally by the said John Forbes & Co., and accounted for to Panton, Leslie & Co., or in other words purchased of them at a stipulated value, and at the risk of John Forbes & Co. Your orators further state that a great portion of these pretended "bad debts" consisted of debts due to Panton, Leslie & Co., by John Forbes, James Innerarity, and William Simpson, individually, and incurred by them before the formation of the firm of Jno. Forbes & Co., which debts had been assumed in the manner above stated, by the firm of Jno. Forbes & Co.; and that, classing these debts, due by themselves, as "bad debts," they wrote them back, in the said "revisionary accounts," to the debit of Panton, Leslie & Co.; thus actually *debiting* Panton, Leslie & Co., with what was due them by the individuals composing the firm of John Forbes & Co. All this fully appears from a statement dated Pensacola, December 14th, 1809, signed by the said John Forbes and James Innerarity, a copy of which is hereto annexed, marked "Exhibit E," and which your orators pray may be taken to be a part of this bill; and from a letter from James Innerarity to one Octavius Mitch., agent of the said Jas. Innerarity, dated June 10th, 1826, a copy of which is hereto annexed, marked "Exhibit F," and which your orators pray may be made a part of this bill, so far as the same may be necessary. This proceeding, on the part of the said Jno. Forbes & Co., your orators charge was utterly unjustifiable, and the result of fraud and collusion between the said John Forbes and James and John Innerarity; and that James Innerarity, in his letter last alluded to, admitted it to be an irregular and anomalous proceeding. Your orators further shew unto your honors, that the firm of Panton, Leslie & Co., during the period when they were engaged in business, acquired, by traffic with the Indians, various tracts of land, the title to which was confirmed in them by the British and Spanish Governments; that land, in general, was not a usual object of trade with the said firm, but that these lands were received from the Choctaws, and other Indian tribes, in payment of old outstanding debts, which had accumulated to so large an amount as to preclude the possibility of satisfying the said debts with the produce of the chase, which were the usual objects of traffic; that the titles to these lands were originally taken in the name of the then senior members of the said firm of Panton, Leslie & Co., William Panton, Thomas Forbes, and John Leslie, and their heirs, as tenants in common; that the said lands were always treated as real estate by the said senior partners, till their death, and that each of the said senior partners, in his will, devised his share, in the said lands, to his heirs as real estate. Your orators further show, that on the dissolution of the firm of Panton, Leslie & Co., the said lands passed informally into the possession of John Forbes & Co., or of the members

of said firm, and were held by them in trust for the heirs of William Panton, John Leslie, and Thomas Forbes; that the said James Innerarity, in an answer on oath to certain interrogatories filed in a suit instituted against said James Innerarity on the 20th June, 1825, in the first judicial district court of the State of Louisiana, by one D. W. Johnson and one George Edwards, admits that a portion of these lands, known as the Apilachicola tract, were so held by them in trust; and your orators charge that all the lands of Panton, Leslie & Co. were held by John Forbes & Co. for the same uses and purposes, and that there was no distinction between them; that the said John Forbes shewed that he looked on the said lands as real estate, and held in the manner just mentioned, by selling, as the executor of William Panton, John Leslie, and Thomas Forbes, the said Apilachicola tract, for the benefit of the heirs of the said Panton, Leslie, and Thomas Forbes, respectively; and the said James and John Innerarity showed that they looked on the said lands in the same light of real estate, belonging to the heirs of Panton, Leslie, and Thomas Forbes, by putting in a claim themselves for their share of the purchase money of the said Apilachicola tract, as heirs of William Panton. Your orators further state, that the said James Innerarity, on the 16th day of February, 1829, filed his bill, (a copy of which, together with the answer of John Innerarity thereto, is hereto annexed, marked "Exhibit N,") and which your orators pray may be taken as an exhibit to this bill, in the circuit court of the State of Alabama, for Mobile county, against the said John Innerarity, then and still residing in Pensacola, in the Territory of Florida, and against the heirs of the said John Forbes, residing in the island of Cuba; in which bill, among other things, he states, that the firm of Jno. Forbes & Co. was indebted in large sums of money, and that suits had been instituted against him as acting surviving partner of the said firm, for debts amounting to $120,000; that he had little or no funds of the said firm in his hands to meet the said demands; that the firm owned houses, lots, and lands in Mobile and the vicinity, but that he was unable to sell said real estate, by reason of the title thereto being in the name of Jno. Forbes & Co.; and that real estate was one of the ordinary objects of trade with the said firm, and was looked on by the said firm as merchandise, and as part of the partnership stock. Your orators state, that the said bill purports to set forth a correct list of all the lands, standing in the name of the firm of John Forbes & Co., in the State of Alabama, and prays that the title thereto may be vested in the said James Innerarity, for the purpose of selling the said lands to pay the said debts. To which bill an answer was filed by the said John Innerarity, admitting all the material facts asserted in the said bill, and stating the said John Innerarity's willingness that the same should be sold in the manner and for the purpose set forth in the said bill. Upon which proceedings a decree was rendered on the 7th day of December, 1829, vesting the legal title in the said James Innerarity, and authorizing him to sell the said land at public or private sale. That, in virtue of the said decree, the said James Innerarity did sell, both at public and private sale,

divers of said tracts and lots of land. That a large portion of those tracts, which were sold at public sale, were bid in by one William Garrow, by order of the said James Innerarity, and were immediately afterwards re-conveyed by the said Garrow to the said Jas. Innerarity, many of which tracts have since been sold by the said James Innerarity at an immense profit. That the said James Innerarity also made divers collusive and fraudulent private sales, under color of the said decree, selling the said lands at a merely nominal *price*, and afterwards having the same re-conveyed to him. That in this manner Jas. Innerarity continued to become possessed of a great part of the lands of William Panton, John Leslie, and Thomas Forbes, to his own use. For your orators charge that all the lands so sold and mentioned in the bill of the said James Innerarity, were lands originally acquired by and granted to Panton, Leslie & Co., and passed over informally, as before stated, to John Forbes & Co., in trust for the heirs of Panton, Leslie, and Th. Forbes, and that none of said lands were originally acquired by John Forbes & Co. Your orators further shew, that the debts really due by the said firm were stated much above their real value by the said Jas. Innerarity in his said bill, amounting in effect, as your orators verily believe, to but little more than $30,000. That the object of the said Jas. Innerarity, in swelling the claims against the house of Jno. Forbes & Co., to this exaggerated amount, was in order thereby to avoid the appearance of fraud, and that he might have a plausible pretext for selling five times as much land as was necessary to pay the debts of Jno. Forbes & Co., which your orators charge he actually did.

That the said James and John Innerarity, well knowing that real estate was rapidly rising in value, instituted this proceeding in order to become possessed of the said lands to their own use, instead of waiting till the lands had increased in value, and then selling them, as the interests of the firm demanded; and that the whole proceeding was a conspiracy between the said James Innerarity and the said John Innerarity, to enrich themselves, at the expense of the heirs to whom the said real estate rightfully belonged.

Your orators further represent, that they were never made parties to the said bill of Jas. Innerarity, and that the said decree was rendered without the claims of your orators having been in any manner laid before the said court. That your orators never had notice, or knew in any way, of the filing of the said bill, or of the proceedings thereon, and that no order was ever published, or process issued, to make your orators parties to said bill.

Your orators further show unto your honors, that the said James Innerarity has, at various times, since the death of Thomas Forbes and the said John Forbes, admitted the existence of just claims against the house of Jno. Forbes & Co., by the representatives of the said Thomas Forbes. That in the two certificates before referred, marked "Exhibits B and C," he certifies, that $70,000 of outstanding debts had been recovered, of which he admits the estate of Thomas Forbes to be entitled to one-third part. That, in a "confidential" letter to one F. Dal-

cour, a son-in-law of the said Jno. Forbes, dated September 22d, 1823, in the French language, (translated extracts from which are hereto appended, marked "Exhibit G," and which your orators pray may be made a part of this bill,) the said James Innerarity admits that the house of Jno. Forbes & Co. was, at that time, heavily indebted, and that the claims of the estate of the said Thomas Forbes were first in importance.

Your orators further state, that they, and the said W. H. Forbes, have applied, at various times, to the said James Innerarity, for a statement of the amount of the estate of Thos. Forbes, with Jno. Forbes & Co., and the old concerns, but that the said Jas. Innerarity has always refused, under various pretences, to render said accounts, sometimes pretending that, in a matter of such great importance, it was necessary that he should first obtain professional advice, at other times asserting the impossibility of making up a final statement of the said accounts. That, in a letter to Octavius Mitchell, dated Pensacola, March 3d, 1826, (a copy of which letter is hereto appended, marked "Exhibit H," and which your orators pray may be taken to be a part of this bill, so far as the same may be necessary,) the said James Innerarity, in answer to a demand made by the said W. Henry Forbes, for an account of his father's estate, after alleging the impossibility, at that time, of stating the accounts demanded, adds, that he cannot pledge himself to any fixed time for making up the said accounts. That the said James Innerarity always refused to render an account to the representatives of the said Thomas Forbes, except on the most unreasonable conditions, sometimes demanding one-third, and even one-half, of all that should appear to be due the estate of Thomas Forbes; at other times requiring from the representatives of Thomas Forbes a pledge that they would not prosecute him for the balance which might be found due.

Your orators further shew, that, on the 18th day of September, 1832, the said James Innerarity entered into a written engagement, in the presence of one R. G. Barde, who signed the same as a witness thereto, (a copy of which engagement, with the stipulation thereto annexed by the said James Innerarity, is hereto appended, marked "Exhibit I," and which your orators pray may be made a part of this bill,) that he would furnish the children of Thomas Forbes with the accounts of their father's estate, taken from the books of John Forbes & Co., within one year after their entering into certain stipulations, in the last engagement mentioned, which your orators aver were, as will appear by reference to the said engagement, unreasonable and absurd, and such as the said James Innerarity had no right to demand; and to which, accordingly, the said William Henry Forbes, in a letter to James Innerarity, dated Caminar, December 30th, 1832, (a copy of which is hereto appended, marked "Exhibit L," and which your orators pray may be made a part of this bill of complaint,) for various reasons therein enumerated, refused his assent.

Your orators further show unto your honors, that the said William Henry Forbes left this country before attaining his majority, and resided

continually beyond seas till about the 28th day of May, 1839, when he returned to the United States, seven or eight days after which he died. That none of the children of the said William Henry Forbes, your orators, (with the exception of your orator, Isabel Ana Forbes, who resided, while under age, a few years in the city of Philadelphia, for her education,) have ever been in this country, but have continually resided, and still do reside, beyond seas. That your orator, John Gordon Forbes, never was in the United States till the month of April, 1839, but has most of his life resided in the island of Ceylon. That your oratrix, Mary Sophia Williams, has never been in the United States, but has always resided, and still does reside, in England.

Your orators further represent, that, from their continued residence abroad, and having always heard the said John Forbes, James Innerarity, and John Innerarity, reputed honorable men in their mercantile relations, and otherwise always had full confidence in their integrity, and never heard, till lately, any rumors or statements calculated to shake their confidence in the said Jno. Forbes and Jno. Innerarity, but always supposed that they were conducting your orators' affairs in a manner perfectly conducive to their interests.

Your orators further state, that the said W. Henry Forbes sent over to Pensacola, in or about the year 1825, one R. G. Barde as his agent, to attend to the affairs of his father's estate. In 1827, he sent one J. W. Miller, for the same purpose; and in 1832, one L. C. Vanuxan, who all made continued application to the said James and John Innerarity for an account and settlement, but were always put off by the said Innerarity, under various pretences before mentioned. That, from the year 1832 till the period of his death, in the year 1839, the said W. Henry Forbes continued to make the like applications for an account and settlement of his father's claims, which has always been refused by the said Innerarity under the like pretences. That your orator, J. Gordon Forbes, on hearing various reports, and receiving information that all was not right, left Ceylon, and arrived at Mobile in April, 1839. That, immediately on his arrival, he applied to the said Jas. Innerarity for information relative to his father's estate, and whether anything was due to the said estate from the firm of Jno. Forbes & Co., and demanded an account thereof; and that he has continually repeated his demands, but that the said James Innerarity has constantly refused to render such account, or to give your orator, J. Gordon Forbes, any information relative to his father's estate, uniformly answering that it was necessary for him first to consult his lawyers. Now, your orators charge, that throughout the whole of these proceedings, from the death of the said Thomas Forbes to the present time, the said James Innerarity has particularly conspired, first with the said John Forbes, who, being at the same time executor of Th. Forbes, and of the other deceased partners of Panton, Leslie & Co., and also a partner of the firm of Jno. Forbes & Co., had ample opportunity of managing the estates of the said deceased partners as it suited his interest, and that of the firm of Jno. Forbes & Co.; and after the death of the said Jno. Forbes

& Co., the said Jas. Innerarity, becoming administrator of the estate of the said Jno. Forbes in Mobile, and thus possessing the same facilities for acting for the benefit of the firm, and to the detriment of the heirs of Th. Forbes, likewise conspired with the said Jno. Innerarity, who had become administrator of Jno. Forbes in Pensacola, and committed divers acts of fraud, in direct violation of the trust reposed in him, and in derogation of the rights of your orators, by erasing, as your orators are informed and verily believe, correct entries on the books of Jno. Forbes & Co., and of the preceding concerns, and making false entries therein; and by collusively selling the lands of Panton, Leslie & Co., and buying them in at a nominal price; and by various other fraudulent and inequitable proceedings.

Your orators further state, that various letters and other documents, signed by said James Innerarity and Jno. Forbes, copies of which are in your orators' possession, contain evidence of the said collusive and fraudulent proceedings. That in one of the letters written by Jno. Forbes to James Innerarity, dated Matanzas, Oct., 1822, (extracts from which are hereto annexed, marked "Exhibit K," and which your orators pray may be made a part of this bill, so far as the same may be necessary,) the said John Forbes advises the said Jas. Innerarity to make all communications on this subject in cypher; and further, that the said Jno. Forbes in said letter makes use of a certain mysterious expression, "mebocid," which your orators aver is a fictitious name agreed on between the said Jas. Innerarity and Jno. Forbes, for the purposes of fraud upon, and concealment of, the rights of your orators.

That in another of these letters addressed by James Innerarity to the said O. Mitchel, dated March 4th, 1826, (a copy of which letter is hereto appended, marked "Exhibit M," and which your orators pray may be made a part of this bill, so far as the same may be necessary,) the said Jas. Innerarity alludes to secret agents and means, which he says it was necessary to employ. Your orators further represent unto your honors, that in the letter to Octavius Mitchel, before referred to, marked "Exhibit F," the said James Innerarity expresses great fears of a suit against him, on account of the claims of your orators, and declares it to be his opinion that the said William Henry Forbes ought to give him a pledge, in writing, that he would renounce all claim against him, James Innerarity, and the house of John Forbes & Co., on account of the estate of Thos. Forbes; that the said letter contains admissions of proceedings which, your orators aver, are fraudulent on their face; that the said James Innerarity, and the said John Forbes, in their statement of 14th December, 1809, before referred to as "Exhibit E," and the said James Innerarity, in his letter last above referred to, asserted that they would be in a state of insolvency and perfectly destitute, after paying the debts due by John Forbes & Co. to the estates of the deceased partners of Panton, Leslie & Co., and to that of Thos. Forbes; whereas, your orators charge that, though the business of the firm went on declining till the death of John Forbes, in 1823, and the consequent dissolution of the said firm; and though, as far as your orators know,

but little or no profits have been realized by the said firm since the death of the said Thomas Forbes, yet the said Jas. and John Innerarity are now in possession of an immense estate in lands and other property, which your orators charge they have obtained by the fraudulent and collusive proceedings above set forth.

Your orators further show unto your honors, that the said James Innerarity and John Innerarity are the only surviving partners of the said firm of John Forbes & Co., and are in possession of all the books, papers, vouchers, title-deeds, and other documents of the firm of John Forbes & Co., and of the firm of Panton, Leslie & Co. Your orators further state, that divers letters and notes have been written by and passed between the said John Forbes and the said James and John Innerarity, or some one of them, and their correspondents, agents, or confederates, relating to the several matters hereinbefore mentioned and alleged, particularly relative to the fraudulent and collusive sales of real estate in Mobile and elsewhere, and to the fraudulent revision of the accounts hereinbefore mentioned, which letters or notes, or some copies or extracts thereof, together with divers other memorandums or other writings relating to the matters aforesaid, are now in possession of the said James and John Innerarity, or one of them; which books and papers contain, as your orators verily believe, complete evidence of the justness of your orators' claims; but the said Innerarity have always hitherto refused to produce the said books and papers, although often applied to for that purpose.

Now, so it is, may it please your honors, that the said James and John Innerarity, combining and confederating with each other, and with the said John Forbes, and with divers other persons at present unknown to your orators, who, when discovered, your orators pray may be made parties defendants to this bill, and contriving how to wrong and injure your orators in the premises, absolutely refuse to comply with the frequent requests of your orators to furnish an account, or in any manner to satisfy the claims of your orators against them, setting up the various pretences hereinbefore set forth. All which doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators, in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this sort are cognizable and relievable. To the end, therefore, that the said James Innerarity, and the said John Innerarity, and their confederates, when discovered, may, upon their several oaths, to the best of their respective knowledge and belief, full, true, direct, and perfect answers make to all and singular the matters aforesaid, and that as fully and distinctly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and more especially that the said confederates may, in manner aforesaid, answer and set forth, whether, at the time of the death of the said Thomas Forbes, the firm of John Forbes and company was not largely indebted to the said Thomas Forbes, and whether there was not an admitted balance on the books

of John Forbes & Co. in favor of the said Thomas Forbes, at the time of his decease, of seventy-seven thousand one hundred and six dollars and five reals, ($77,106.5;) whether the pretended "revisionary accounts," hereinbefore mentioned, were not made up by writing back to the debit of Panton, Leslie & Co. debts which had been purchased from Panton, Leslie & Co., and assumed by them at a stipulated value, but which afterwards turned out to be worthless; if not, in what manner and on what principles the said "revisionary accounts" were made out; whether a great portion of the debts asserted to be bad by John Forbes & Co., and accordingly written back to the debit of Panton, Leslie & Co., did not consist of debts due by the said John Forbes, the said James Innerarity, and the said William Simpson, individually, to the firm of Panton, Leslie & Co., and that said confederates may state of what other items, if any, the said "revisionary accounts" consisted, and when the said revision was finally concluded, and at what time the aforesaid deductions from the account of Thomas Forbes were made, and whether the said bad debts had not been previously assumed unconditionally by the said John Forbes & Co., and at their own risk; if not, upon what conditions were the said debts assumed.

And whether outstanding debts have not been recovered on account of Panton, Leslie & Co., and John Forbes & Co., by them, the said confederates, or by John Forbes & Co., since the death of the said Thomas Forbes. If so, what those debts were, and their amount; and what debts, if any, due to Panton, Leslie & Co., or to John Forbes & Co., remain still unrecovered; and whether the firm of John Forbes & Co. realized any profits after the death of the said Thomas Forbes, and to what amount; and whether the firm of Panton, Leslie & Co. was not, at the time of its dissolution, possessed of a large quantity of real estate; of what it consisted; and whether the said real estate was not taken by the said Panton, Leslie & Co., in payment of old outstanding debts due them by the Indians; and whether the titles thereto were not originally in the name of William Panton, John Leslie, and Thomas Forbes, and their heirs; and whether each of the said senior partners did not bequeath his share in the said real estate to his heirs; and whether, on the said dissolution of the said firm o' Panton, Leslie & Co., the said real estate did not remain in the possession of the surviving partner, who constituted the new firm of Jno. Forbes & Co., and was not held, and considered to be held, by them, in trust for the heirs of the deceased partners; and further, that the said confederates may state the nature of the arrangement, if any, by which the lands, as well as the personal estate, of Panton, Leslie & Co., were transferred to John Forbes & Co.; and whether any conveyances or deeds of transfer, either of the lands or of the personal property, were ever executed; if so, what was the nature of the said instruments, and the conditions thereof; and whether land was not always received by all the members of the different firms, at least until the death of Thomas Forbes, as real estate, and, as such, descendible to the heirs of the deceased partners. And whether any and what lands

were sold by the said James Innerarity, in virtue of the decree of the circuit court of Mobile county, hereinbefore mentioned, vesting the legal title to certain lands in the said James Innerarity, for the purpose of sale. What lands have been so sold, for what price, when, and to whom, and whether at public or private sale; and also which of the said lands were afterwards reconveyed to the said James Innerarity or John Innerarity, and for what consideration, when, and by whom; and whether all the letters, statements, and other writings, alleged to be written and executed by James Innerarity and John Forbes and others, copies of which are hereto annexed, were not, in fact, written and executed by them as alleged, and whether the said copies are not substantially correct. And that the said confederates may disclose the meaning of the mysterious expression, "Mebocid," used in the letter of John Forbes, above referred to as "Exhibit K," and may state to whom and what the said expression relates. And may also disclose what were the secret agents and means referred to in the letter of James Innerarity, above referred to as "Exhibit M;" and that said confederates may state whether, on the formation of the firm of Jno. Forbes & Co., the said James Innerarity and John Forbes were not heavily indebted, on their individual account, to the firm of Panton, Leslie & Co., and to what amount; and whether the said Jas. Innerarity, and John Forbes, and John Innerarity, ever put any capital into the said firms of Panton, Leslie & Co., and Jno. Forbes & Co.; and whether the whole capital of Jno. Forbes & Co. did not consist of the assets and funds of Panton, Leslie & Co., or of the said Thomas Forbes' share of the said assets. And that said confederates may state what interest the said Thomas Forbes had in the firm of Jno. Forbes & Co., and what capital he put into the said firm; and whether he was not the only member of the said firm who ever furnished any capital. And that the said confederates may produce before your honors all the books, papers, vouchers, letters, notes, memorandums, deeds, conveyances, articles of agreement or copartnership, or any other writings belonging to the said firms of Panton, Leslie & Co., and Jno. Forbes & Co., in any wise relating to the matters and things hereinbefore setforth, which are in the possession of the said confederates, or within their reach. And that a just and true account may be taken of all the partnership dealings and transactions of the late firms of Panton, Leslie & Co., and John Forbes & Co., as far as relates to the said Thomas Forbes; and that the said confederates may be directed to pay over to your orators what, if anything, shall appear to be due to the estate of the said Thomas Forbes; and that the said confederates may render a full and true account of all the lands sold by them, under the decree of the circuit court of Mobile county, hereinbefore alluded to, and of all lands which were at any time in the possession of Jno. Forbes & Co., and of the lands in the possession of the said firm of Jno. Forbes & Co., which still remain unsold; and of the rents and profits of the lands so sold, as far as they accrued previous to the said sales; and of the rents and profits of all the partnership lands yet unsold; and of the

lands which were sold, and afterwards reconveyed to the said James Innerarity, or the said John Innerarity, and which are still in their possession. And that, in the meantime, the said Jas. Innerarity may be restrained, by the injunction of this honorable court, from making any further sales of the said lands, the title to which was vested in him by the decree of the circuit court of Mobile county aforesaid, or of any lands which, at any time, stood in the name of Jno. Forbes & Co., and Panton, Leslie & Co.; and that your orators may have such further relief in the premises as the nature and circumstances of the case may require, and to your honors shall seem meet May it please your honors to grant unto your orators, not only the writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said James Innerarity, to restrain him from making any further sales of the said lands, alluded to in the said decree of the circuit court of Mobile county, and of any other lands which, at any time, stood in the name of Panton, Leslie & Co., or of Jno. Forbes & Co., but also the writ of subpœna, directed to the said James Innerarity and the said John Innerarity, thereby commanding them, at a certain day, and under a certain pain, therein to be limited, personally to be and appear before your honors, in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and further to stand to, perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet. And your orators shall ever pray, &c.

GIBBONS & FISHER,
Solicitors for complainants.
JAMES WEST, Jr.,
Solicitor for complainant.

John Gordon Forbes, the above named, one of the complainants in the foregoing bill of complaint, being duly sworn, says, that the facts set forth in the said bill, so far as the same are of his own knowledge, are true, and those otherwise are true, to the best of his knowledge and belief.

J. G. FORBES.

Subscribed and sworn to before me the 3d day of June, A. D. 1840.
BENJ. WILKINS,
Justice of the peace, M. C.

Exhibit A, Thomas Forbes' Will.

NEW PROVIDENCE.

I, the honorable Thomas Forbes, do declare this to be my last will and testament. After the payment of my just debts, I give, devise, and bequeath all my property, real and personal, in the Bahama Islands, in West Florida, and elsewhere, unto my children, William Henry Forbes, John Gordon Forbes, and Mary Sophia Forbes, and to their heirs and assigns forever, equally to be divided between them, share and share alike. I nominate and appoint my brother, John Forbes, and

my above named two sons, executors of this my last will and testament, dated second day February, 1808.

Signed, THOMAS FORBES. [SEAL.]

Sealed and delivered in presence of us—

Signed, REEVES FOWLER,
" JOHN A. BODE,
" GEO. H. RAMSAY.

I further direct and desire, that it may be considered as a part of this, my will, that the several young gentlemen, now employed as clerks by me, may be paid one year's salary, as a mark of my friendship for them; and also, that my servants, Harry, Cuffey, and Harry's wife, may be confirmed in their freedom, and also in their title to the little property held by them.

Signed, J. F.

Present—

Signed, REEVES FOWLER,
" JOHN A. BODE,
" GEO. H. RAMSAY.

Exhibit B, certificate of Jas. Innerarity, Sept. 1st, 1823.

I certify, that the heirs of the deceased Mr. Thomas Forbes, have claims against the house of John Forbes and Co., of West Florida, for the share which belongs to him as partner in the said house, under the several relations in which he stood to said house until his death, for recoveries made from the Choctaw nation, which recoveries amount, to the best of my recollection, not having at hand either books or accounts from which to state them with certainty, to the sum of thirty thousand dollars.

Signed, JAMES INNERARITY.

Matanzas, Sept. 1st, 1823.

Exhibit C, certificate of Jas. Innerarity, Oct. 27th, 1823.

I, the undersigned, senior partner of the firm of John Forbes & Co., established in West Florida, and which by an equal establishment residing at New Orleans, under the title of William Simpson, do certify by these presents, that the heirs of Thomas Forbes, senior partner of the former establishment in the same company, entitled Panton, Leslie & Co., possess a right to several pending claims, against the house of John Forbes & Co., emanating from recoveries obtained by the said house of the Choctaw Nation of Indians; also of several other debts, the amount of which will not at the present time be less than forty thousand dollars, although unable to speak with exactness, not having the books at sight to ascertain by their contents the exact and precise sum, nor the debits against it; of which sum as already stated, be it more or less, there corresponds a third part to the above mentioned heirs. And I further certify, that the before mentioned Thomas Forbes was a partner of the said firm during a certain period of his life, which was continued from

the latter end of the year 1804, when Mr. John Leslie died, being one of the partners, until the end of 1808, when died also the said Thomas Forbes, and the accounts of this period are not, as yet, liquidated, considering, under the same reserve of not having the books of the house at sight, that a credit will result in favor of the successor of Mr. Thomas Forbes, above mentioned, of twelve to fifteen thousand dollars, more or less, on account of profits; certifying in equal manner, that there exists against the house of Jno. Forbes & Co., a pending suit, by the representatives of a certain McGilliway, for a sum of about fifty-three thousand to fifty-seven thousand dollars, with interest from the year 1807, and if the said suit is gained by the above mentioned house, the heirs of the said Thomas Forbes will be entitled to the third part of the said amount.

In testimony whereof I have granted the present at the request of Mr. William Henry Forbes, in the jurisdiction of Caminar, on the 27th day of October, 1823.

Signed, JAMES INNERARITY.

Witnesses—

MARTIN FOLCH,
JOHN W. MILLER,
WILLIAM FALES,
WILLIAM H. GEARY.

Exhibit D, statement by Jas. Innerarity.

Some time after the closing of that concern, (the old concern of Panton, Leslie & Co.,) that ended in 1792, and account current of its affairs was made, but the books were not finally closed, nor was any assignment of the profits made to the differentpartners; in 1798, Robert Leslie, one of the junior partners, was admitted; in 1792 died, and a new concern was opened, but owing to the difficulties of the period, and want of clerks, the books of the former one were not closed; things remained in this situation till 1801, when Mr. Panton died; the shares of Robert Leslie and William Panton lapsed after their death unto those of the surviving partners, but from the extremely dispersed situation of the trade and number of debts outstanding over all the four Southern Indian Nations, it was impossible to close these preceding concerns; negotiations for obtaining payment of their debts, had been carrying on for some time before, and now drew increased attention from the surviving partner in this quarter, Mr. John Forbes. In December, 1803, leaving the current business to the management of two recently admitted partners, W. Simpson and James Innerarity, he made a voyage to the city of Washington, to treat with the Government for the purchase of lands from the Indian Nations to be taken by the Government, and their debts, due the house, to be discharged thereby; whilst there he received intelligence in 1804, of the death of his other senior partner, John Leslie, in London, which rendered it necessary for him to repair to said city, which he did, and returned not to this country till April, 1806; shortly after the business of finally closing all their complex concerns was finally entered on,

the debts were classed into good, doubtful, and bad, and assumed on their supposed merits; it was soon, however, discovered that this classification was highly erroneous, and that by it large assets were presumed to be vested with the actual partners that never had, and possibly never would, come into their hands; an extensive and scrupulous revision of the accounts was therefore commenced, in 1807, and with the consent of the only surviving partner of the old concern, Thomas Forbes, and of the representatives of the deceased partners, carried through, by assuming only what had actually been paid, and leaving the outstanding debts at the risk of the concern to whom they were due.

Exhibit E.—Statement by John Forbes and Jas. Innerarity, R. L. Dec. 14th, 1809.

The following corrections are the results of a careful revision of the accounts betwixt the different co-partnerships, in which it was obvious that great errors had inadvertently been admitted, as at no period subsequent to the close of concern, say in the year 1798, were the assets in the hands of the surviving co-partners adequate to the payment of the balances, at the credit of the senior partners, even after deducting those due by the junior partners. We might here stop and rest the corrections on their own intrinsic merits, but some explanation may perhaps be necessary of the principles on which they are grounded; and we feel assured that no one will hesitate a moment in admitting them, when he reflects, that on the 30th June, 1807, when the accounts close, the subscribers leave themselves absolutely destitute, after spending their whole lives in the service of the house. The *connections* resolve themselves under the three following heads:

1. Debts due by the junior partners, assumed conditionally - - - - -	$55,760 02½
2. Indian debts at Appalachy, given for the cession of land - - - - -	21,878 01
3. Debts and interest assumed improperly by each concern - - - - -	43,904 02¾
	$121,542 06¼

Of these, the two first required no elucidation. The junior partners stand in the same predicament as insolvent debtors; and in regard to the Apalachy debts, they were given for a valuable consideration, which belongs entirely to the heirs of the three senior partners, and would have been otherwise totally lost to them but for our exertions. When making out the accounts these debts were omitted. The last item had been overlooked, till lately, under the impression that the amount was trivial, until a more narrow investigation convinced us that we had grossly deceived ourselves; and, as perseverance in error can never convert it into truth, we felt ourselves justified in applying the only remedy of which it was yet susceptible, that of a scrupulous revision of all the assumptions, from the commencement of the concern, in 1792, to the period

Exhibit E. Statement of John Forbes and Jas. Innerarity.

of closing the accounts, in June, 1807; an inspection of the annexed exhibits will demonstrate the pains bestowed on this object, and we trust the results will bear the strictest examination. Our idea has been to make every concern *to* sustain its own burthen, by writing back to its debit, with interest, wholly or partially, what the succeeding concerns never recovered, of the debts bequeathed to them, notwithstanding their utmost exertions; nor can we conceive that any one can doubt our right to do this, founded, as it is, on every obvious principle of justice. Of the balances that compose these lists, some were totally irrecoverable from the outset; others were thought good at the time of their assumption, but were, in a little time, found to be desperate, altho' the particular nature of our trade obliged us to continue giving the parties small outfits, in order to save a part, or eventually the whole. With some this had the desired effect, but with others, who saw, in the gradual diminution of our confidence, a design of giving no longer the indiscriminate credits to which they had been accustomed, we were, after many years, at the point where we set out. In the mean time, though they paid no interest, it was accumulating on their assumptions; and it is only by a statement of the present nature that the case can be fully appreciated. Had we been more fortunate in our business, we should not probably have been easily induced to reverse entries, which time, but not justice, may seem to sanction. As it is, we must be just to ourselves before we can pretend to be liberal to others.

Pensacola, 14th December, 1809.

Signed, JOHN FORBES,
JAS. INNERARITY.

Exhibit F. J. Innerarity's letter to O. Mitchell, June 10th, 1826.

PENSACOLA, *10th June*, 1826.

MY DEAR SIR: On the 4th instant I received your various esteemed favors of the 24th, 27, 28 April, and 11th May, and, only two days since, that of the 12th April, by Mr. Godfroi—the last came accompanied by a letter from that gentleman requesting time to pay the notes to you. He depended, it seems, on Charles Lalande, a very worthy man, but by no means wealthy, and who has a large family dependent upon him. The consequence is a natural one, disappointment; and I really fear your money will not be recovered for a long time. So much for that matter. I take up your other letters according to their dates. 24th April. You did quite right in showing my letters of the 3d, 4th, and 6th March, to Mr. W. H. F., and I am glad to perceive by the P. S. of the 1st May to your favor of the 29th April, that he had promised to accede to my proposals, altho' I see no mention of anything having actually been done in the matter up to the 11th May, the date of your last. It would be satisfactory, and I beg of you to have a deed or engagement, in conformity, executed. *It may be a* private one, and would be better so, but the signature should be attested by five witnesses, who need, however, to know nothing of the contents.

Mr. F.'s assent has come in the very nick of time to stimulate my exertions, as I am likely to have still more trouble with the business than I have yet had; and I assure you a stimulus had become quite necessary, for the information contained in your previous favor of the 3d, 8th, of April, of his intention to attack my estate by an entredicho, had almost paralyzed me. I hope all ideas of this kind are now forever abandoned; and, moreover, I do think that he ought to give a solemn pledge par irrit, that he will renounce all claim of action against me, and against the late firm of John Forbes and Co., and the surviving partners thereof, and make his recourse when and where only every lawyer will tell him it legally and properly lies, against his uncle's estate. This necessary to tranquilize my mind, (not that I fear the result of an attack from him,) but that I may go to work coolly and quietly, under the amplest and most positive assurance, that, in laboring for him, I shall not sharpen a weapon to be aimed against myself. This assurance given to me will, moreover, redound to his own benefit. The task before me is an arduous one, and it is impossible I can ever get through it while my mind is constantly stretched on the tenter-hooks of anxiety, and harassed by the threats of those I am endeavoring to serve. If Mr. Forbes thinks that he has found anything against me in the paper of the 14th December, 1809, (see exhibit E,) I must beg leave to say that he is mistaken. It was the act of the executor, and not of the executor of his father only, but of the executor of the estates of John Leslie and W. Panton, as co-executors of W. Panton, (although he was the only acting one.) I certainly did stand exposed to my own relations, but they unanimously acquitted me on a full view of the cause and all its circumstances. Perhaps Mr. Forbes and myself might so far have calculated beforehand on the approval of our respective friends, (and might, perchance, have been therein mistaken,) but he incurred a further responsibility thereby, viz., to the Leslie family, a family, none of whom had any bias in his favor, but rather the contrary; yet they, even they, with Alex. Gordon at their head, approved of it. If you were personally acquainted with that gentleman you would say, that, for a cool, clear, penetrating head, and sound, moderate, considerate judgment, you knew perhaps none his superior. That gentleman then—and in appealing to him I appeal to a host—in proof of its correctness, examined the whole matter, article by article; and although, for a particular purpose, he made a momentary show of resistance, he ratified it; thus demonstrating, even by his delay, that his ratification was not the result of carelessness, of indolence, or of ignorance, but of examination and conviction. Anomalous as the transaction may now appear, I will never blush for it. If placed exactly in the same circumstances, ignorant as I then was, from my secluded, Pensacolian life, of men, of things, of laws, and of consequences, I should, perhaps, from the most honorable motives, do again the same thing. Not so, had I then seen or known the consequences that might have resulted. I should then have cleared myself of the cost of whoever might be the sufferer. I should have done this honestly, as an

open, avowed insolvent, and then who would have questioned the deed?

But this is not all. Let any one who may now blame the transaction, cast his eyes back to those days, see and know the influence we possessed with men in power—see corruption and venality in the persons of —— ——— and of —— ———, filling the chair of state and the tribunal of justice—men with whom any one could do any thing for a bag of dollars, and then let him say whether he cannot conceive that, if disposed to have acted dishonestly, what we did, perhaps irregularly, we might not have done *quite regularly, quite fairly, quite honorably, and quite honestly in appearance*, and yet infinitely more detrimentally to the parties who would now call the act in question. But further, and what I did not know of till I returned here last, (as my residence was, in those days, at Mobile, and I only visited Pensacola occasionally,) it appears that W. H. Forbes was, as far back as 1810, made fully acquainted with the whole business. He was here in the house during the years 1809, '10, and '11, and there is now here, in his handwriting, a complete sett of the revisionary accounts, on which the paper of 14th Dec'r, 1809, was based. He was then known to the transaction, and had he not been so, I conceive, that setting aside its being the deed of his father's executor, he would, in equity, still be bound by it, because, in such cases, a majority of creditors, I believe, usually bind the whole. Leslie's heirs, and Panton's heirs, unanimously, and without hesitation, confirmed the transaction, *which was irregular but not dishonest*.

28th April, you take up this subject again in this letter, which is nearly exhausted by my preceding remarks. I have, however, to say, in addition, that Mr. Forbes is under an erroneous impression in thinking himself, under any aspect of the business, wronged to any such considerable extent, by the reduction from his father's apparent credit in 1809, as he supposes. "Errors excepted," are placed at the bottom, or implied, in all mercantile accounts, and there were gross errors in making up the original statement to our prejudice, that required correction, and were corrected. For what we were ultimately deficient, it would perhaps been the easier and better, certainly the safer course, for us to have declared insolvency; but John Forbes revolted at the idea. I made the same proposition to him at a subsequent period during the war, when he was pressing us to perform impossibilities, and he remained without a word to answer. Would to God I had, at that time, carried it into effect. I should have been a *rich* man to-day, and those gentlemen who think themselves so grievously wronged, would find themselves NOT QUITE so well off as they are. Having filled this sheet, I shall take up your other letters to-morrow.

Yours, ever truly,

Signed, JAS. INNERARITY.

My peculiar misfortune lies in being compelled, from the death of that man, to stand, at present, the brunt as principal, for transactions in which, really and truly, I acted but a very subordinate part.

Exhibit G.—Confidential letter from Jas. Innerarity to F. Dalcour, (translated extracts,) Sept. 22d, 1823.

(Confidential.)

SEPT. 22d, 1823.

Mr. F. DALCOUR.

DEAR SIR: After our last conversation, you desired me to trace out for you a plan for your future guidance in West Florida. I now proceed, in conformity with your request, to give you my ideas on this subject, which, in truth, is sufficiently thorny, (épineux,) but still susceptible of being arranged, provided a spirit of good understanding and of conciliation reigns among those who are therein interested. That the Florida establishments owe considerable sums of money is useless to deny. I cannot speak with certainty as to their amount, as the books are yet in a state of confusion. * * * *

As the affair of , as I told you yesterday, I have been informed by my lawyer, that there are so many objections apparent on its face, that it will be thrown out of court without difficulty, unless they are corrected at the present time, and that when it comes to be heard on the merits, it will probably *will* not be necessary to produce other than the strongest items only of the exculpatory evidence, (pieus justificatives.) Besides, the cause once gained, we should have a hold upon the other party, which would forever impose silence upon them. I have laid before you the inconveniences which would result from the loss of this suit, and it is not necessary to repeat them. The claims of Mr. Forbes, for the estate of his father, are first in importance; after him, come those of the estate of Leslie. Mr. Forbes appears disposed not to press us, provided he is not pressed here himself, and that he receives assurances that no obstacles will be thrown in the way of his recourse to the estate of his uncle.

Signed, JAS. INNERARITY.

Exhibit H.—Letter to Mitchell from Jas. Innerarity, Nov. 3d, 1826.

It is absolutely impossible to complete a statement of his (W. H. Forbes) father's accounts in the old firms of Jno. Forbes & Co., or even to make an approximation to it, within the time that he requires it should be done. Circumstances, beyond my control, have compelled me to proceed *poco a poco*, and even to suspend operations for a time; and I can, at this moment, see no probability of being able to furnish the accounts he demands before the end of this year, when I hope to be enabled to do it. Yet I cannot, much as I should wish it, pledge myself as to time, for fear of failure from accidents that may yet arise to prevent, although my interest, inclination, and the painful anxiety these old affairs cause me, all urge me to terminate them as speedily as possible. My interests and inclinations both point to Cuba. Here I am absolutely sacrificing my time; and not only that, but I am suffering an exile a thousand times more horrible to me than could be Botany Bay. The condition, therefore, as to the time of furnishing accounts,

which are totally unconnected with, and distinct from, the service for which I claim remuneration, is to be absolutely rejected.

Signed, JAS. INNERARITY.

Exhibit I.—Engagement of Jas. Innerarity, 18th Sept., 1832.

On receiving from the children and heirs of Thomas Forbes, esq., of Nassau, in the island of New Providence, deceased, a legal and satisfactory stipulation, that they will pay to me their proportion of the amount of moneys by me expended for lawyers' fees for defending the various suits instituted and carried on by D. W. Johnson and George Edwards, and by Roswell Post Johnson, the assignees of the representatives of Alexr. McGilleway, deceased, for the recovery of certain moneys said to be due to the said McGilleway by the former house of Panton, Leslie & Co.; as, also, their proportion of my personal expenses incurred during about six months of each of eight years in New Orleans in attending to said defence, estimated at five hundred dollars for the six months of each year; and upon receiving, likewise, a legal and satfactory stipulation, that they will also pay to me twenty per cent. upon the amount due to them from the estate of Jno. Forbes, deceased, for and on account of the said "McGilleway claim," as it is familiarly called, estimated in the year 1814 to amount to sixty-two thousand dollars, or thereabouts; the said twenty per cent. being considered as but a fair remuneration for my services in attending to the conduct and defence of the suits aforesaid.

Upon receiving the stipulations aforesaid, I engage, within twelve calendar months thereafter, to furnish to the children of the said Thomas Forbes, esquire, deceased, the accounts of their deceased father, taken from the books of the said John Forbes & Co., of West Florida, of which firm the said Thomas was a partner till the time of his death, that they may claim from the estate of the said John Forbes, who was their uncle and their father's executor, such balance as may appear to be due to them; the said accounts to be transmitted within the time specified after the receipt of the stipulations aforesaid, under a penalty of the forfeiture of the aforesaid remuneration of twenty per cent., as claimed by me for services in defending the aforesaid McGilleway suit, unless prevented by the occurrence of any fatal accident to myself or brother. The payment of the said twenty per cent. may be contingent, and postponed until recovered from the estate of the said John Forbes, deceased; the amount paid for lawyers' fees, and the four thousand dollars admitted to be the moderate sum of my personal expenses, to be paid absolutely, and not to depend on any contingency whatever, but may be charged to the debit of the said Thomas Forbes, and his successor or children, in the accounts to be rendered as above; as may, also, the aforementioned twenty per cent. on the total amount of the McGilleway claim, to be, however, held contingent on its recovery as aforesaid.

Signed, JAS. INNERARITY.

MOBILE, 18*th Sept.*, 1832.

Witness: Signed, R. G. BARDE.

We, William Henry Forbes, of the island of Cuba, and John Gordon Forbes, of the island of Ceylon, children and heirs of Thomas Forbes, esq., of Nassau, deceased, do hereby agree, for ourselves, and, so far forth as in us lies, for our sister Mary Sophia, the wife of Williams, esq., of London, to deliver to James Innerarity the stipulations above spoken of, within a reasonable time; and do further stipulate, that no suit shall be instituted against him on the said accounts when received, nor molestation or hindrance given to him in any capacity, before the expiration of four and a half years from the date of the present; it being understood, however, that if, after the final liquidation and adjustment, in conformity with the accounts, and after the expiration of the time aforementioned, any balance *any balance* should still be due, the said Innerarity will make good his due and just pro rata proportion of the same; and will *and will* pay such pro rata proportion, in annual instalments, to the amount of one-sixth part of the nett and clear proceeds of his income from his coffee estates in Cuba; but he shall not be held accountable for any part, share, or proportion of said balance, that ought to be paid by the estate or successor of the said late John, *be paid by the estate or successor of the said late John* Forbes, from which in fact, as being the estate of the executor of Thomas Forbes, the whole ought to be recovered.

Exhibit K.—John Forbes' letter to James Innerarity, Oct., 1822.

MATANZAS, *Oct.* , 1822.

DEAR JAMES: I intend putting up with this letter various documents and correspondents, for the purpose of elucidation, of which you will find a memorandum at foot. You are so well acquainted with the state of my feelings and thoughts on the subject of Florida affairs, that it would be idle for me to depict them here; in one word, your brother's conduct has been so wantonly at variance with his own repeated promises, and the interest of the concerned, that I have lost all confidence in him. When I withdrew from the Florida concern, it was certainly not my wish to hurry a settlement, or drive the house to indure sacrifices by any precipitate measures. I did, however, expect that, after a lapse of time exceeding four years, I should have obtained a statement of affairs in that quarter. I am under the impression that little or nothing has been done, and that you will find the books in a state of great backwardness. I therefore submit to your judgment the propriety of engaging a good bookkeeper, for the express purpose of assisting you, as it is my first wish to see a state (statement 2d) of the affairs of that concern.

Some investigation with respect to the new claims will naturally occur to you. Your communications respecting this object had better be made in cypher; the name of the 5th partner in this business has never been communicated to us. You must converse with Mr. Mitchell on this subject, and take with you , his ideas are, that any further expenditure for this object would be imprudent.

I am most decidedly of opinion that we ought to get rid of all our

real property in West Florida. The annexed power will enable you, as far as my signature is wanting, to execute all necessary deeds and settle all affairs connected with the late concerns in West Florida and Mobile.

I have put up the accounts formerly sent me by you and your brother, which are imperfect, and I hope you will be able to digest them into a proper form. Not only this, but provision must be made for the balance that may be due. You will of course have to look into the state of recoveries on account of the old concerns, and the employment of those funds. The information given me by "Mebocid" has left a strong impression on my mind, and I shall be happy to be relieved from it as soon as possible.

Your obedient, humble svt.,

Signed, JOHN FORBES.

Exhibit L.

W. H. Forbes's letter to Jas. Innerarity, Dec. 30th, 1832.

CAMINAR, *Dec. 30th*, 1832.

DEAR SIR: Your son James delivered to me, on the first inst., your esteemed favor dated so far back as July last, to which I would sooner have replied, had I not been absent nearly the whole of the interval at my upper plantation, some leagues distant from this. I have seen your son several times since his arrival; he improves much on acquaintance, and you may rely upon it that, if I can in any way serve his views in this quarter, I will willingly do it. He has as yet seen very little of the island, but so far, like every new comer, appears to be highly pleased. I fear, however, that, on a more narrow inspection, that here, as elsewhere, if there be much to commend, there is not a little to condemn. I am sorry that, on reflection, I cannot sign the agreement sent on by your son, and as I deem it no more than justice to you, I will here give you such reasons as occur to me at the moment, which I hesitate. In the first place, then, I object to sign it, because it differs materially with the ideas Mr. Vanuxun often expressed of these affairs before he left this; not that his having entered into the agreement might not be urged as an argument in its favor, but, as far as I can judge from the tenor of his letters, he appears, in what he did, to have been actuated by the conviction that he was right, but from the stern law of necessity, to which we must all bow occasionally. It is very probable that, had my inestimable friend arrived, he might have given me other reasons, of which I must now forever remain ignorant. As it is, I do not deny that he has adduced some why I ought to accede, but, in my opinion, they are by no means conclusive. 2dly. I object, because, in allowing the per centage claimed by you on the McG. affair, it would be placing you on a better footing than myself, and that, too, after you have had the use of this money for so many years in trade. Mr. Shoemaker, whom I thought it my duty to consult, as my brother's only remaining attorney, also thinks the demand excessive, and that it is not just that the whole of the burden of compensation should fall on the

heirs of Thomas Forbes. 3dly. I object, because, as a partner of John Forbes & Co., as an executor of your uncle, Mr. Panton, an agent for his heirs, an heir yourself, and his residuary legatee, you were bound both by honor and interest to defend the suit to the utmost; indeed, had the adverse party gained, the consequences to the house would have been fatal; and that you were of this opinion, let me bring to your recollection what you wrote to Mr. Dalcour, under date the 22d September, 1823, (see Exhibit G.) 4thly. I object, because, on your departure from this, in 1823, you gave me to understand that the accounts of my father's estate should be sent me in eight or ten months. Could this have been complied with, I need not say that it would have saved me a world of mortification and trouble I have waded through and besides, it would have spared me the misery of being obliged to sue for a "judicio de espera," in order to protect myself against the attacks of that insidious old scamp, Bellchasse, and which I only lately obtained after much expense and vexation. 5thly. I object, because I have been strongly advised by my lawyer to enter a suit at once against Mr. Dalcour, as being the only feasible way of ever settling these long-winded concerns; he says that, by means of Mr. Dalcour's sworn account, and of the other strong documents in my possession, I can easily compel him to furnish me with my father's accounts; and moreover, that any account I may present against him, based upon the above mentioned documents, it will be for him to disprove. As it is my determination to follow his advice, it would, I think, be neither wise nor prudent to fetter myself by any agreement wherein I should absolve both you and your brother, Mr. John Innerarity, from any responsibility for four and a half years to come.

The above are some of the many reasons I have for hesitating to sign. I am fully aware that they may not be satisfactory to you, but, under my present impressions, I cannot act otherwise. I shall regret, believe me, sincerely regret, if any thing should occur, in the settlement of these old affairs, to diminish for a moment the good understanding which has and I trust always will subsist between us; but, until I see my way clearly, I repeat that I cannot put my signature to any paper which might possibly have the effect of paralyzing my operations here. I beg to add, dear sir, my best wishes for your welfare, and the assurance that I am,

Respectfully and truly, yours,

Signed, W. H. FORBES.

Exhibit M.

Jas. Innerarity to Oct. Mitchell, March 4th, 1826.

PENSACOLA, *March 4th*, 1826.

DEAR SIR: With respect to the recovery of the old outstanding debts, alluded to in my respects of 9th October, I am very sorry to say that the prospect of success, although very faint then, is still more so now. A larger sum than what he, Mr. F., limits the expenses to (10 per

cent. on the amount) has already long since been expended by J. F. & Co., in the vain attempt at their recovery. The additional expenses to be now incurred would at least double his limits, and the prospect of success being so extremely faint, it would not be worth while to incur trouble on lower terms than those mentioned in my said letter of 9th October, viz: to receive one half of whatever sum we might recover, clear of all the expenses to be incurred. By the bye, this way of limiting the expenses appears to me to bad policy, to say the least of it. We have no inclination to incur useless expense, but must certainly be supposed to be better judges of what is necessary and proper than Mr. Forbes. It is a simple question, and to us appears of very easy solution, whether it be better to save something, or to lose all. To show Mr. F., however, that both my brother and myself are perfectly disposed to meet him half way, we are willing to use our best exertions for the recovery of the debts for one-third of the gross amount recovered, exclusive of the reimbursement of all expenses, which expenses must be left to our discretion, with the assurance that they will be limited as much as a wise economy shall dictate, keeping in view, on one hand, the interest of the heirs, and on the other the proverb, penny wise and pound foolish. We should launch into no expense of much consequence, without some reasonable prospect of ultimate success, but Mr. F. ought not to entertain sanguine hopes, as the thing, under its present aspect, appears more than ever doubtful. Had this system of limiting our expenses been adopted heretofore, not a shilling of all the outstanding debts of the old firms, or an acre of land in lieu of them, would ever have been recovered.

I remain, my dear sir, yours, ever truly,

Signed, JAS. INNERARITY.

P. S. It is proper to add, distinctly and explicitly, for Mr. F's information, that the expenses must be admitted upon honor, as we shall have to employ means and agents whose names cannot be disclosed.

Exhibit N—Jas. Innerarity's bill.

To the honorable Abner S. Lipscomb, judge of the first judicial circuit of the State of Alabama, exercising chancery jurisdiction in the county of Mobile.

Humbly complaining, sheweth unto your honor, your orator, James Innerarity, of the county of Mobile, in the State of Alabama, that he is the acting surviving partner of the late mercantile firm of Jno. Forbes & Co., which was composed of John Forbes, now deceased, of the island of Cuba, James Innerarity, of the county of Mobile, in the former province of West Florida, now State of Alabama, and of John Innerarity, of Pensacola, in the former province of West Florida, now territory of Florida; that the business of that branch of the firm, which was established at Mobile aforesaid, and which was under the management of your orator, consisted in the purchase and sale of land, as well as in the ordinary transactions entered into, and generally understood

to be the objects of mercantile enterprise; that the said Jno. Forbes died in the year of our Lord 1823; and that the said firm bearing his name as aforesaid, at the time of its dissolution, was indebted to a large amount, and still remains indebted in large sums. That suits have been instituted against your orator as surviving partner of the said firm of Jno. Forbes & Co., to an amount of upwards of one hundred and twenty thousand dollars, to satisfy which, as well as other claims that ought to be paid, there is no partnership property belonging to said firm, in the hands of your orator, subject to his control as surviving partner aforesaid, unless one slave belonging to said firm, about ten years old, worth about three hundred dollars, be so subject in its character of personal estate. Your orator further sheweth unto your honor that there is a large amount of real estate belonging to said firm sufficient or nearly so to pay all just demands against it, if sold on such terms as to bring its value. That the said real estate, though standing in the name of said firm, that is to say, in the name of Jno. Forbes & Co., was acquired and purchased by the partnership funds, and no other, for the benefit of the said firm in the same manner as ordinary merchandise, bought and sold thereby, and for the use and benefit of all and each of the individual members composing said firm, as well as for the purpose of being applied to the raising of funds for the payment of its debts, if any there should be at the closing of the affairs thereof. That the grants, deeds, and title papers for the said real estate, were taken in the name of the said firm according to the usages observed in this country while under the Spanish Government, under which the said firm was established, and the said real estate acquired; which mode of taking the said title was owing to the fact that, by the Spanish law under which they were acquired, there was no distinction between real and personal estate; and that the rights of the several partners, in this mode of taking the titles, were the same in both; so that had the business of the said firm been brought to a close before the change of government, under the same circumstances under which they must now be closed, there would have been no need of an application to any tribunal for a grant or decree of powers, which, by the laws of that Government, were the same in relation to the real estate of a mercantile company as to the ordinary merchandise in which they dealt. But, in consequence of a change of jurisdiction, which the county where the said real estate is situated has undergone, and of the introduction of a new and different rule of law therein called the common law, your orator is advised, by counsel, that, according to that law, which does not consider real estate as a subject for mercantile speculation, or suffer the title thereof to be passed as for personal estate belonging to a partnership, he cannot, as surviving partner of the said firm, sell the said real estate belonging thereto so as to convey a legal title to the purchaser thereof, however much indebted, or however great its exigencies may be. Your orator further shews unto your honor that the real estate belonging to said firm is as follows, viz: One tract of land called Poplar or Orange Grove, lying and being in the county of Mobile, and situate within the present cor-

porate limits of the city of Mobile, containing two hundred and seventy-two acres, more or less, and also including the marsh and swamp land lying between it and the river Mobile, the whole bounded east by the river Mobile; south by the city and lands and lots therein claimed by the Toulmin family, Joshua Kennedy, and others; west by lands also claimed by Kennedy and North, by the following tract of John Forbes & Co.; one tract of land called Laurent, lying and being in the county of Mobile, bounded south by the preceding tract, west by lands of unknown proprietors, north bayou Chataugau, containing four hundred arpens, (French measure,) exclusive of the marsh lands to Mobile river on the east; one tract of land called Choctaw Point, lying and being in the county of Mobile, and situate within the present corporate limits of the city, about one and a half miles south of Government st., bounded north by lands claimed by the heirs of McCandly's, by those of Espejo, and by ——— Bunoudy's, east by Mobile river and bay, south by lands claimed by Samuel H. Garrow, and west by other lands vacant at the time of the grant, containing six hundred arpens, (French measure,) or five hundred and seven $\frac{62}{100}$ acres, more or less.

One other tract of land, called L'Anee Mandeville, in the county, and situate within the present corporate limits of the city, about two and a half miles, more or less, south of Government street, bounded east by Mobile bay, having twenty arpens, more or less, front thereon; north by lands claimed by Samuel H. Garrow, esq.; south by lands claimed by General Clausel; west by lands vacant at the time of the grant, containing eight*y* hundred arpens, (French measure,) or six hundred and seventy-six acres, more or less, whereof about fifteen acres have been sold to Charles Lalande. One other tract of land, called Grande Terre, situate, lying, and being in the county of Baldwin, on the Tensa river, about —— miles north of the town of Blakely, bounded west by said river, from the south bank of the confluence of Potatoe creek, to a distance of about eighty-four arpens; northerly, and on all other sides, by lands vacant at the time of the grant, containing five thousand and forty arpens, more or less. One lot, piece, or parcel of ground in the town or city of Mobile, bounded on the north by St. Michael street, having a front of one hundred and forty-three feet thereon, more or less; south by St. Francis street, having a front of one hundred and forty feet, more or less, thereon; east by the back part of the lots, whereon are erected the buildings called Gordon's range, on Water street; west by lots of the heirs of Simon Andry, and by another lot belonging to said Jno. Forbes & Co. One other lot or parcel of ground in the city of Mobile, bounded east by the above mentioned lot; south by St. Francis street; west by Royal street; and north by the lot of the heirs of the late Simon Andry. One other lot or parcel of ground in the city of Mobile, bounded east by Water street; north by a lot formerly belonging to your orator, Jas. Innerarity, but now to Jonathan Hunt and others; west by the dwelling house lot of Dr. Gannard, and a lot belonging to Crips Crimpard; and south by a lot formerly belonging to Crips Buisson, containing,

per survey, 36,385 $\frac{2}{10}$ sup. feet. One other lot or parcel of ground in the city of Mobile, at the east corner of Royal and Government streets, bounded on the north by a lot formerly belonging to the heirs of Benito Ceno; on the west by Royal street; on the south by Government street, extending along the line of the latter to Mobile river. One other lot or parcel of ground in the city of Mobile, bounded on the east by Royal street, of which it forms the southwest angle with St. Francis street; on the north by the latter street, to its intersection with St. Joseph street; on the west by St. Joseph's street; and on the south by a lot belonging to Regis Bernoudy, and another formerly belonging to Benjamin S. Smoot and H. Y. Chamberlain. One other lot or parcel of ground in the city of Mobile, forming a square, bounded east by Royal street; west by St. Joseph's street, north by St. Michael street; and south by St. Francis street, with the exception of a portion of the same, viz., seventy-six feet front on Royal street, by one hundred feet, sold to T. C. Butler, esq. One other lot or parcel of ground in the city of Mobile, containing seventy-six feet, more or less, on the south side of Dauphin street, bounded west by a brick building, to Messrs. Batres, occupied by d'Olive & Walker; east by a brick building belonging to Brewster, occupied by Bloodgood & Bright; and south by a lot now or formerly of Lewis Judson, esq. One other lot or parcel of ground in the city of Mobile, containing about eighty feet front, on the west side of Royal street, by about one hundred and seventy-three feet deep, bounded south by a lot the former residence of the late Benjamin Dubrocat, esq.; and north by a lot wherein is now the shop of Dr. Grusnard. One other lot or parcel of ground in the city of Mobile, at the southwest angle of St. Francis and St. Joseph streets, bounded north by St. Francis street; east by St. Joseph street; south by the dwelling-house lot of Regis Bernoody; and west by another lot of Regis Bernoody. One other lot or parcel of ground, with a wooden building thereon, situate at the northwest angle of the intersection of St. Francis and St. Joseph streets, bounded east by St. Joseph street; north by St. Michael street; south by St. Francis street; and west by lots of Clair Faire and Manetta Mongaula, free people of color. One other lot or parcel of ground in the city of Mobile, at the southeast angle of St. Joseph and St. Louis streets, having a front of sixty French feet on St. Joseph street, by a depth of one hundred and twenty feet on St. Louis street, bounded south by a lot belonging formerly to Martha Piton, now in the occupancy of —— Collins; and east by a lot now or formerly belonging to the heirs of Andry. One other lot or parcel of ground in the city of Mobile, at the southwest angle of St. Anthony St. Joseph streets, having sixty feet front on St. Joseph street, by one hundred and twenty feet deep. One other lot or parcel of ground in the city of Mobile, beginning at a point on the western side of Royal street, seventy feet south of the south line of Poplar Grove tract, and extending southward ninety-six feet front on said Royal street, with a depth backward of one hundred and twenty feet, (both French measure,) bounded westward by lands claimed by ——

Kennedy; and on the north by the following: One other lot or parcel of ground in the city of Mobile, having seventy feet front on the western side of Royal street, by a depth of one hundred and twenty feet, (both French measure;) bounded south by the preceding lot; west by lands claimed by Kennedy; and north by the southern line of Poplar Grove plantation. One other lot or parcel of ground in the city of Mobile, having sixty feet French, on the western side of Royal street, by one hundred and twenty feet deep; bounded south by a lot and house belonging to your orator, at the northwest angle of Royal and St. Anthony streets; west by a lot formerly belonging to the late Thomas Powell; and north by a lot claimed by the heirs of W. E. Kennedy. One undivided half of a piece or parcel of land in the city of Mobile, containing three French arpens in the whole, situate at the southwest angle of Conti and St. Joachim streets; bounded south by lands belonging to your orator; north by Conti street, and the old Catholic burying ground; east by St. Joachim street; and extending back westwardly for quantity.

Your orator further shows unto your honor, that the said John Forbes, at the time of his death, left two children, Juana and Sophia, to whom he devised all his estate, both real and personal, except some small legacies, as will more fully appear by his will, an authenticated copy of which has been duly admitted to probate, in the county court of Mobile county, and a copy of which is hereto annexed, and prayed to be made a part of this bill, for the purpose of reference, whenever it may be necessary so to do. That the said Sophia intermarried with one Francis Dalcour, and has, since the death of the said John Forbes, died, leaving six children by said Dalcour, namely, Carlotta Elizabeth, Camilla Juana, Catalina Sophia, Juana Teodora, Augustin José, and Teresa Laura, who are all infants, and who, together with the said Francis Dalcour, your orator prays may be made parties to this bill. That the said Juana has, since the death of John Forbes, intermarried with one Edmond Depestre, both of whom your orator prays to be made parties to this bill.

Your orator further shows unto your honor, that the said firm is much indebted as aforesaid, and that there is no other property under his control, as surviving partner aforesaid, but the slave before mentioned, to pay or satisfy the same; and that the exigencies of said concern generally require its affairs to be brought to a close as soon as possible; and that, even if there were no debts due, the contrary whereof your orator charges to be the fact, from the peculiar situation of the heirs and devisees of the said John Forbes, who are, some of them, infants, and who, though born in the United States, are domiciliated in the island of Cuba, without the intention of returning, an advantageous, or even a fair, division of said estate, could not be made in the ordinary course of law. Wherefore, in order that a fund may be raised for the payment of the debts due by said firm, that the profits and means thereof, if any remain after the payment of the debts aforesaid, may be divided and distributed to the terms on which said partnership was formed, and the

affairs thereof be brought to a final close, and inasmuch as your orator is remediless in the premises, by the strict rules of the common law, which do not authorize him, the said estate belonging as aforesaid to said firm, as the acting surviving partner thereof. In tender consideration whereof, and inasmuch as your orator is relievable in a court of equity only, where matters of this sort are properly cognizable, may it please your honor to grant unto your orator the provisional writ of subpœna, to be directed to said defendants and the said John Innerarity, who, your orator prays, may also be made a party to this bill; commanding them to be and appear at the next term of this honorable court, and answer this bill; and on a final hearing thereof, may it be decreed that all the real estate aforesaid, and all other real estate belonging to the said firm of John Forbes & Co., may be sold; and that your orator be authorized to sell the same in such parcels, and on such terms, as he may find most advantageous to the said firm, and most effectual to raise a sum sufficient for the payment of the debts due thereby; that the heirs and devisees of the said John Forbes be considered as trustees for the benefit of the said firm, and of the individual members thereof, as far as relates to the said real estate; and that the proceeds thereof, when sold, be applied, under the direction of your orator, as surviving partner, to the payment of the debts due by said firm; and that the remainder, if any, be distributed among the partners thereof, or to their legal representatives, according to the terms of the said partnership; and that if your orator has in any thing mistaken the relief to be prayed for, that such other and further relief be devised as will better suit the nature of this case.

And your orator, as in duty bound, will ever pray, &c.

Signed, JAS. INNERARITY.
SAMUEL ARN,
Solicitor for Complt.

Answer of Jno. Innerarity.—Exhibit N.

The answer of John Innerarity, of the city of Pensacola, in the Territory of Florida, one of the defendants to the bill of complaint of James Innerarity, of the city of Mobile, in the State of Alabama, complainant. This defendant, in his own proper person, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage and exception to the many errors and insufficiencies in the complainant's bill of complaint contained for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says: that he admits that a mercantile firm, under the name and style of Jno. Forbes & Co., was formed under the Spanish Government, and existed in Florida previous to the change of Government, whereby that part of the late Spanish province of Florida became a part of the territory of the United States, and subsequently a part of the State of Alabama; and that the said firm was composed of John Forbes, deceased, late of the island of Cuba, James Innerarity, the complainant, and John Innerarity, the de-

fendant, as in said bill of complaint alleged and set forth. And this defendant, further answering, saith, that he admits that the said John Forbes departed this life in the island of Cuba, some time in the year of our Lord 1823; and that the said firm was, at the time of its dissolution, indebted, and still remains indebted, in large sums, to pay and satisfy which he admits that there are no moneys belonging to said firm in the hands of said complainant, nor other means or property under his control as the acting surviving partner of the said firm, which this respondent admits him to be. And this defendant, further answering, saith, that he admits that the real estate belonging to said firm is the only means belonging thereto out of which a fund can be raised for the payment of the debts due thereby, except one slave, and perhaps a few debts due thereto, of inconsiderable amount, not yet collected; and that the said real estate was purchased with the partnership funds, and no other, for the benefit of said partnership; and tho', from an idea of convenience at the time, the titles were taken in the name of the firm, it was always understood by the members of said firm to be a part of their common stock in trade, and their uniform intentions were, that it should be treated as ordinary merchandise, and be subject to the same rules in its ultimate disposition; and that each and every member of said firm should have the same interest and legal interest therein as if his individual name had been inserted in the deeds and title papers therefor. And if the said complainant, under the laws of the State of Alabama, where the said real estate in his said bill mentioned is situate, has not the right, as the acting surviving partner aforesaid, to sell the said real estate, so as to convey to purchasers a legal title thereto, this defendant is desirous and willing that the same should be sold in such manner, and on such terms, as this honorable court shall direct, in order that means may be raised for the payment of the debts due by said firm, and that the overplus, if any, be divided among the several parties in interest, according to the law of said partnership. Without that, there is *any* other matter or thing in the said complainant's bill of complaint contained material or necessary for this defendant to answer to, and not herein or hereby well and sufficiently answered, is true to the knowledge of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed, with his costs and charges in this behalf sustained.

(Signed) JOHN INNERARITY,
Solicitor pro se.

The above answer was regularly sworn to before Judge Brackenridge, of the superior court for the western district of the Territory of Florida, on the fourth day of March, 1829. Filed August 8th, 1840.

DAVID FILES, *Clerk.*

Subpœna.

And afterwards, to wit, on the eighth day of August, in the year of our Lord one thousand eight hundred and forty, the following writ of subpœna was issued from the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA,

Circuit court of the United States for the ninth judicial circuit and southern district of Alabama:

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon James Innerarity and John Innerarity to be and appear before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the fourth Monday of November next, to answer unto the bill of complaint filed in the clerk's office of said court, on the eighth day of August, A. D. 1840, John Gordon Forbes, Mary Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Lorita Josepha Forbes, and Rosalia Sofia Forbes; herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of March, in the year of our Lord one thousand eight hundred and forty.

Issued the 8th day of August, in the year of our Lord one thousand eight hundred and forty.

Attest:

——— ———,

Clerk C. C. southern district of Alabama.

Rec'd 8th August, 1840, and executed same day on James Innerarity.

ROB'T L. CRAWFORD, *U. S. M.*

Jno. Innerarity not found.

ROB'T L. CRAWFORD, *U. S. M.*

And afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and forty-one, being a day of a term of said court begun and held in and for said district, at Mobile, on the second Monday of November, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

JOHN GORDON FORBES vs. JAS. INNERARITY. } 2,582.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and forty-one, being a day of a term of said court begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, the following proceedings were had, to wit:

JNO. GORDON FORBES et al. vs. JAS. INNERARITY et al.

This day came the complainants, by their solicitors, and it appearing

that the defendants served with process have failed to plead, answer, or demur, within the time prescribed by the rules of this court, it is ordered, that an attachment issue against them, and each of them, unless they, and each of them, do within thirty days plead, answer, or demur to said complainants' bill; and that this cause be continued.

And afterwards, to wit, on the seventh day of February, in the year of our Lord one thousand eight hundred and forty-two, the said defendant, James Innerarity, filed in said court the following demurrer, to wit:

Circuit court of the U. S.:

JOHN GORDON FORBES et al.
vs.
JAMES INNERARITY.

The defendant aforesaid, not confessing or acknowledging all or any of the matters or things in the said complainants' bill contained to be true, in manner and form as therein set forth, doth demur to the same, and for cause of demurrer sheweth, that the said complainants hath not, in the said bill, made or stated such a case as doth or ought to entitle them to such discovery or relief as is thereby sought and prayed for from the said defendant. And for a further cause of demurrer, the said defendant showeth, that the said plaintiffs have not made the proper parties to the said bill; and that on the face of the bill it appears that a necessary party is one over whom this honorable court cannot take jurisdiction, to wit, John Innerarity, who is a citizen of the Territory of Florida. And for a further cause of demurrer the defendant saith, that the said bill is uncertain, multifarious, and that several distinct matters are set forth therein, and matters in which the defendant is in nowise concerned.

Wherefore, this defendant demands the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and prays to be dismissed hence, with his reasonable costs.

JAMES INNERARITY,
STEWART EASTON,
CAMPBELL & CHANDLER,
Sol'rs for James Innerarity.

Filed Feb'y 7th, 1842. DAVID FILES, *Clerk.*

And afterwards, to wit, on the seventh day of April, in the year of our Lord one thousand eight hundred and forty-two, being a day of a term of said court begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-two, the following proceedings were had, to wit:

JNO. GORDON FORBES et als.
vs.
JAMES INNERARITY et als.

This day came the complainants, by their solicitors, and the defen-

dant, James Innerarity, came, and the demurrer of the said James to the complainants' bill was argued by counsel; and it is thereupon ordered by the court, that the said demurrer be sustained, and the court allows the complainants till the first day of next term of this court to file amendments to the bill, and in default of an amendment the bill then to be dismissed.

And afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, being a day of a term of said court begun and held in and for said district, at Mobile, on the fourth Monday of November, A. D. 1842, the following proceedings were had, to wit:

J. G. Forbes et al.
vs.
J. Innerarity et al.

The complainants having failed to amend their bill on or before the first day of the present term, on motion, it is ordered, adjudged, and decreed by the court, that said bill of complaint be dismissed, and that said complainants pay costs, for which execution may issue.

Bond.

United States of America,
Circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Know all men by these presents, that we, Henry O. Brewer, Charles W. Gascoigne, and Andrew J. Ingersoll, are held and firmly bound unto James Innerarity in the just and full sum of two hundred dollars, lawful money of the United States, to be paid unto the said James Innerarity, his certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-five.

The condition of this obligation is such, that whereas John Gordon Forbes, Mary Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, and Rosalia Sofia Forbes have sued out a writ of error, returnable to the Supreme Court of the United States on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-five, on a certain judgment recovered against them at a term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the fourth Monday of November, A. D. 1842, in a certain cause therein, wherein the said John Gordon Forbes, Mary Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, and Rosalia

Sofia Forbes, were complainants, and the said James Innerarity was defendant. Now, if the said John Gordon Forbes, Maria Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, and Rosalia Sofia Forbes shall prosecute their said writ of error to effect, or failing therein, shall pay to the said James Innerarity all costs and damages which he may sustain by their failure to sustain their said plea, then the beforegoing obligation to be void; otherwise to be and remain in full force and virtue.

H. O. BREWER, [SEAL.]
CHAS. W. GASCOIGNE, [SEAL.]
A. J. INGERSOLL. [SEAL.]

Signed, sealed, and delivered in presence of—
ALEX. EVERETT.

I, John Fitts, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the within and beforegoing sixty-six pages and seventeen lines contain a true, full, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined therein, wherein John Gordon Forbes, Mary Sophia Williams, Thomas B. Williams, Isabel Ana Forbes, Juan Forbes, Maria de Jesus Sarah Forbes, Loreta Josepha Forbes, and Rosalia Sofia Forbes were complainants, and James Innerarity and John Innerarity were defendants, as the same remain on file and of record in said court.

In testimony whereof, at office in the city of Mobile, I have hereunto [L. S.] set my hand and affixed the seal of said court, this fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-five.

JOHN FITTS,
Clk. C. C. So. Dist. Ala.

Filed 29th Novr., 1845.